



BERMAN DEVALERIO

January 8, 2016

VIA ECF FILING

The Honorable Charles R. Breyer
United States District Court
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC)

Dear Judge Breyer:

Please accept this letter as my application for the plaintiffs' steering committee in the above-captioned litigation. I am a senior partner with Berman DeValerio and founded the Firm's San Francisco office in 1992. Berman DeValerio prosecutes complex class actions nationwide on behalf of individuals, public pension funds and companies, helping them recoup damages caused by violations of securities, antitrust and consumer laws. Over the course its 30-plus years, Berman DeValerio has recovered billions of dollars on behalf of its clients. I am honored to provide my responses below to the questions in Pretrial Order No. 2, and have attached my resume and a list of counsel supporting my application.

1. & 2. Professional Experience as MDL Counsel and in This Type of Litigation; and Names and Contact Information of Judges

During my nearly 40 years of experience, I have successfully prosecuted many dozens of antitrust, consumer and securities cases. The follow are examples of instances where I acted as lead counsel in an MDL proceeding (further details are set forth in my resume attached hereto as Exhibit 1):

- *In re New Motor Vehicles Canadian Export Antitrust Litigation*, No. 03-md-01532-DBH (D. Maine). Berman DeValerio is lead counsel in this multidistrict antitrust action representing over 70 new car purchasers accusing major automakers of a conspiracy to keep out cheaper Canadian exports, hurting U.S. consumers. The Honorable D. Brock Hornby (207-780-3280) presides over this case.
- *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.). Berman DeValerio is co-lead counsel for the proposed class of direct purchasers of lithium-ion rechargeable batteries in a class action pending in the U.S. District Court for the Northern District of California which alleges conspiracy to fix the prices of lithium ion rechargeable batteries. The Honorable Yvonne Gonzalez Rogers (510-637-3540) presides.
- *In re Bear Stearns Cos., Inc. Securities, Derivative & ERISA Litigation*, No. 1:08-cv-02793 (No. 08 MDL 1963) (S.D.N.Y.). The Honorable Robert W. Sweet (212-805-0254) presided over this case. *See also* [J. Sweet's webpage](#).



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- *Sullivan, et. al. v. DB Investments, Inc., et. al.*, No. 04-cv-02819-SRC (D.N.J.) (See case description in Exhibit 1 hereto). The Honorable Stanley R. Chesler (973-645-3136) presided over this case. See also [J. Chelser's webpage](#).
- *In re Optical Disk Drive Antitrust Litigation*, 3:10-MD-02143-RS (N.D. Cal.). The Honorable Richard Seeborg (415-522-2123) presided over this case. See also [J. Seeborg's webpage](#).
- *In re Sorbates Direct Purchaser Antitrust Litigation*, No. 98-cv-4886-MMC (N.D. Cal.). The Honorable Maxine M. Chesney (415-522-2041) presided over this case. See also [J. Chesney webpage](#).

3. Willingness and Ability to Immediately Commit to Time-Consuming Litigation

My partners and I are excited about the prospect of working on this matter, which has far reaching public policy and economic implications. I will personally oversee my firm's role in this litigation and am committed to securing positive outcomes for Volkswagen and Audi vehicle owners. I have the time to commit to this work immediately and my firm will commit the resources necessary to see this litigation through to the best possible outcome for the Class.

4. Willingness and Ability to Work Cooperatively With Others

My firm and I routinely share leadership roles with other firms, both as lead or co-lead counsel, as well as on steering committees and executive committees. As a result, we have long-standing and productive working relationships with many of the firms that have applied to be lead counsel or members of a steering committee in this case. In addition, my Firm and I have experience working cooperatively with defense counsel here and other relevant players in this action. For example, I have worked with John Nadolenco of Mayer Brown in a prior complex matter and found him to be a worthy opponent who demonstrated the utmost professionalism. In addition, I have personally worked with Kenneth R. Feinberg, who has been retained by Volkswagen to devise and administer a program to administer claims related to vehicles at issue in this litigation, having used him as a mediator in complex litigation.

5. Access to Resources to Prosecute the Litigation in a Timely Manner

If selected, Berman DeValerio will devote considerable financial and human resources to this litigation, drawing upon the skills of its attorneys and other highly-qualified professional personnel in its three offices. Moreover, I personally have both the time and experience necessary to effectively represent the interests of the Class as part of the Steering Committee, and would be honored to do so.

6. Willingness to Serve as Member of a Steering Committee

I am applying on behalf of Berman DeValerio for appointment to the Plaintiffs' Steering Committee. However, I am prepared to serve in any role the Court deems appropriate and will provide the same level of commitment and resources no matter what role I ultimately take.



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7. The Particular Category or Categories of Plaintiffs the Applicant Wants to Specifically Represent

My firm and I have been retained by vehicle owners – including both Volkswagen and Audi owners, owners who have purchased cars in multiple states, and owners who purchased their cars in states that allow for multiple damages under their consumer protection statutes. We are dedicated to ensuring that vehicle owners obtain the most advantageous settlement or award that is available to them.

8. Any Other Considerations That Qualify Counsel for a Leadership Position

My firm has extensive experience and a proven track record of successfully prosecuting complex class actions MDL cases – including through trial – both here in the Northern District of California and across the country. The Firm has the skill and resources necessary to prosecute this case and has an excellent reputation working cooperatively with all sides of the bench. Both I and other Firm partners have trial experience. Moreover, since the Firm is not involved in any other related litigation against Volkswagen, it will not be tarnished by any appearance of conflicts.

* * *

I have the utmost appreciation for the importance of this litigation and would be honored to participate in representing the class of aggrieved Volkswagen and Audi consumers as a member of the Steering Committee, or any other role the Court deems appropriate.

Sincerely,

Joseph J. Tobacco, Jr.